

ECLI:NL:RBAMS:2024:1512

Authority: District Court of Amsterdam

Date of judgment: 20-03-2024

Date of publication: 20-03-2024

Case number: C/13/719848/HA ZA 22-524

Jurisdictions: Civil law

Features: First instance - multiple

Content indication: A number of advertisements that KLM has carried out in the past are misleading and therefore unlawful, the court ruled. That is the outcome of the collective action that the Fossil Free Foundation filed against KLM because it believes that KLM is engaging in greenwashing.

In these advertisements, KLM makes environmental claims that are based on vague and general statements about environmental benefits, thereby misleading consumers. In other communications, KLM paints an overly rosy picture of the consequences of measures such as Sustainable Aviation Fuels (made from renewable raw materials) and reforestation. These measures only marginally reduce the negative environmental aspects and give the false impression that flying with KLM is sustainable.

FindingsJustice.com

Share: [Enriched pronunciation](#)

Excerpt

Judgment

AMSTERDAM COURT

Private Law Department

Case number / case number: C/13/719848 / HA ZA 22-524

Judgment of 20 March 2024

In the case of

The Foundation

FOUNDATION TO PROMOTE THE FOSSIL-FREE MOVEMENT,

based in Amsterdam,

plaintiff,

Advocate Mr F.M. Peters of Amsterdam,

at

the public limited company

ROYAL AIRLINE N.V.,

based in Amstelveen,

defendant,

Advocate Mr B.M. Katan, Amsterdam.

The parties are hereinafter referred to as Fossil Free and KLM.

What is this case about?

Fossil Free has filed a class action against KLM because it believes KLM is engaging in *greenwashing*. The court finds that a number of advertisements KLM ran in the past were misleading and therefore unlawful. For instance, KLM makes environmental claims based on vague and general statements about environmental benefits and thus KLM

misleads consumers. In other statements, KLM paints too rosy a picture of the effects of measures such as *Sustainable Aviation Fuels* and reforestation. Those measures only marginally reduce negative environmental aspects and falsely create the impression that flying with KLM is sustainable.

KLM thus failed to provide consumers with fair and specific information. KLM now no longer carries the advertisements, nor does it have to rectify the statements. KLM may continue to advertise flying and also does not have to warn consumers that today's aviation is not sustainable. If KLM informs consumers about its ambitions in terms of CO2 reduction, for example, it must do so honestly and concretely.

1 The procedure

1.1. The conduct of the proceedings is evidenced by:

- the summons dated 6 July 2022, with exhibits 1 to 35;
- the statement of reply under section 1018c(5) Rv, last sentence, with exhibits 1 to 25;
- the interlocutory judgment of 8 February 2023;
- the record of oral proceedings, held on 20 April 2023, and the documents referred to therein, including the deed of submission of additional exhibits, with exhibits 36 to 46, by Fossil Free and the deed of submission of exhibits, with exhibits 26 to 30, by KLM;
- the interlocutory judgment of 7 June 2023, declaring the Mass Tort Claims Settlement Act applicable to Fossil Free and Fossil Free's claims admissible;
- The deed dated 2 August 2023, with exhibits 47 to 61, of Fossil Free;
- the statement of reply, with exhibits 31 to 80;
- the record of oral proceedings, held on 19 December 2023, and the documents referred to therein, including the deed of submission of additional production, with exhibits 62 to 86, by Fossil Free and the deed of submission of production, with exhibit 81, by KLM;
- Mr Peters' letter of 16 January 2024 with comments to the minutes of the oral proceedings;
- the letter dated 19 January 2024, with an annex, from Mr Katan, with comments to the minutes of the oral proceedings.

1.2. Judgement was then determined.

2 Parties

2.1. Fossil Free was incorporated on 22 March 2016. Its articles of association read with effect from 23 June 2022, so far as relevant here:

Article 3. Purpose.

1. The foundation aims, for the benefit of present and future generations, to: To promote, protect, support and bring about social, environmental and economic justice and health at local, regional and national levels, to remove the social legitimacy of coal, oil and gas companies (so-called "fossil companies") and to bring about alternative uses of investments and resources in order to thereby accelerate the transition to a sustainable economy based on renewable energy.

2. The foundation shall endeavour to achieve this aim by, inter alia, taking on all possible tasks that may further its aim. Such as, for example:

- Calling on public and private institutions and organisations such as universities, municipalities, insurers, banks, religious organisations and pension funds to sever their financial or other ties with coal, oil and gas companies and become 'fossil-free'.
- Preventing and countering misleading, inaccurate, incomplete and/or unsubstantiated or insufficiently substantiated public statements on environmental and climate impact by the fossil industry and other companies

and organisations, which statements, by their misleading nature, incite consumers to sell, purchase and/or use fossil products and services, or legitimise or encourage this, thus contributing to dangerous climate change.

(...)

- Investigating, initiating or participating in legal proceedings, whether or not as referred to in Article 305a of Book 3 of the Civil Code, which may benefit the cause.

(...)

3. The foundation does not aim to make a profit.

Article 4. The Fossil-Free Movement.

The foundation stems from a growing movement: the 'Fossil-Free Movement'. This is a growing network of students, citizens and professionals, among others, who are calling on their own municipalities, universities or pension funds to cut their financial ties with the fossil fuel industry (so-called 'divestment'), and/or cut other kinds of ties with the fossil fuel industry, in order to tackle climate change and accelerate the transition to a sustainable economy with renewable energy.

This movement is part of the global divestment movement supported by the organisation "350.org". The international Fossil Free campaign originated in the US in two thousand twelve and quickly grew into an international movement, including a Dutch branch. The foundation is aware of the history of the 'Fossil Free Movement' that led to Foundation for the Promotion of the 'Fossil Free Movement'. Contact with and representation of the movement on the board is essential for the foundation.

2.2.

KLM is an airline company. According to its Climate Action Plan 2023, it aims to emit 30% less CO₂ relatively (per passenger kilometre) and 12% less in absolute terms by 2030, both compared to 2019. To achieve this CO₂ reduction, it focuses on three pillars, which amount to: (i) modernising and renewing its fleet, (ii) using more sustainable aviation fuel (*Sustainable Aviation Fuel*, SAF) and (iii) improving operational efficiency. For the longer term (2030-2050), it also counts on future technological developments in the aviation sector. KLM has had its targets validated by the *Validation Team* of the *Science Based Targets initiative* (SBTi), a partnership of non-governmental organisations.

3The dispute

The progress of Fossil Free

3.1.

Fossil Free's claims are set out in full in the appendix attached to this judgment. A (final) decision on part of these claims has already been rendered in the interlocutory judgment of 7 June 2023 (hereinafter: the interlocutory judgment) (see ECLI:RBAMS:2023:3499). Still to be considered - in summary - are the claims of Fossil Free, as far as possible provisionally enforceable:

IV that it be ruled that advertisements made by KLM which suggest that flying can be or become sustainable (expressions 1 to 13) and which suggest that the purchase of or contribution to a "compensation" product actually reduces, absorbs or compensates for part of the climate impact of flying (expressions 14 to 19) are misleading and unlawful and that KLM thereby infringes fundamental rights and the Unfair Commercial Practices Directive;

V (i) That KLM is prohibited from disclosing:

- expressions 1 to 19;

- advertisements with text equal or similar to this, as well as suggesting by commendatory wording that flying, with or without KLM, can be "sustainable" or "responsible" from a climate change perspective;

(ii) That KLM be ordered to remove and keep removed from all media statements 1 to 19 and statements varying therefrom but having substantially the same tenor;

(iii) That KLM be ordered to rectify expressions 1 to 19 (in the manner set out in the annex to this judgment);

VI that KLM forfeits a penalty payment of €100,000 for each violation of the prohibition mentioned under V(i) and/or the injunctions mentioned under V(ii) and (iii);

VII that KLM be ordered to pay the legal costs and the (ii) full extrajudicial costs.

The court determines the content of the claim

3.2.

For the purposes of the assessment of the precise contents of the collective claim required by Section 1018e(2) of the Dutch Code of Civil Procedure, the District Court gave Fossil-Free the opportunity, on the basis of the interlocutory judgment, to comment on the question whether assessment of all nineteen expressions referred to in the summons is still current and to adjust its claims accordingly, if necessary. Fossil Free then stated that it had an interest in its original claims, also with regard to expressions mentioned in the summons that are no longer held by KLM and that for that reason it had not changed its claim or the grounds thereof.

3.3.

The Court observes that it is clear from Fossielvrij's assertions that, in claim IV, it does not so much refer to the Unfair Commercial Practices Directive as to the Unfair Commercial Practices Act or Section 3A of Title 3 of Book 6 of the Civil Code (Sections 6:193a to 6:193j of the Civil Code). KLM's submissions show that it too understood Fossil Free in this way. This reading also fits the nature and purpose of a European directive and a national implementation law. Claim IV is therefore read as Fossielvrij intended.

3.4.

The court notes that only the description of the injunction claim expresses "advertisements containing text identical or similar thereto" and the description of the removal claim expresses "statements varying therefrom but having substantially the same purport". The claims for injunctive relief and an order for rectification are limited to the 19 advertisements described in the summons. To the extent that Fossil Free assumes that the claimed declaratory judgment and the claimed order for rectification also extend to "similar statements", the court does not go along with this. This is not part of the petition.

3.5.

The court thus determines the substance of the class action under Section 1018e(2) Rv on the claims brought by Fossil Free, with the aforementioned observation.

Notes on the progress of Fossil Free

3.6.

Fossil Free argues that the aim of its claims is to get KLM to stop misleading consumers, because KLM is using this deception to perpetuate the harmful growth of aviation. Fossielvrij also wants the damage, in the form of the false perception created by the campaigns, to be repaired. In doing so, Fossielvrij focuses on 19 expressions made by KLM as part of its "Fly Responsibly" campaign and the "CO2ZERO" product and the marketing surrounding the "KLM Real Deal Days". According to Fossil Free, the common denominator of the expressions sees three parts. First, KLM uses the term sustainable while its products are far from sustainable. Second, KLM claims it is tackling climate change when in fact it is committed to aviation growth. None of the measures KLM is betting on outweigh that growth. Thirdly, KLM offers CO2 offsetting products while these do not validly offset or reduce the climate impact of flying.

3.7.

Paragraph 2.1 ("Core of the case") of the writ was quoted in the interlocutory judgment. In it, Fossil Free describes, among other things, the following:

3. This case looks at the urgent duty of companies like KLM, which sell the most polluting products available today, to be honest about the extent to which they and their products contribute to harmful climate change.

4. The aviation industry is a major consumer of fossil fuel, namely petroleum in the form of paraffin. KLM, as the largest airline in the Netherlands, has a very large impact on the climate, particularly through the CO2 emissions of its aircraft when burning paraffin, the greenhouse gas emissions of the entire paraffin supply chain, the other greenhouse gases emitted by aircraft, and the warming effect otherwise caused by its flights.

5. KLM misrepresents this in its advertisements and other communications to the public. In its communications, which reach thousands if not millions of people, KLM tells the public that it can "work with [us] to create a more sustainable future" and says it is "on the road to sustainable travel together". When a customer buys a ticket online, they have the opportunity to "offset" and "reduce" their impact, with a product touted as "CO2ZERO". This marketing is laced with images of green leaves, younger generations and of futuristic aircraft.

6. These claims sound green but are vague, fundamentally flawed and in breach of the Unfair Commercial Practices Directive (...) ("**OHP Directive**"). Anyone who bothers to look deep into KLM's website for substantiation will see that KLM tells people that it and the wider aviation industry are on track to meet the internationally agreed temperature target from the Paris Climate Agreement. However, KLM fails to mention, crucially, that both KLM and the aviation industry are counting on further "*business as usual*" growth in air traffic, something that is completely contrary to the Paris target. Such growth is the opposite of KLM's "Fly Responsibly" claim and which it uses as a brand and logo - a claim that is both an invitation to the public and a eulogy about KLM's own responsibility. The claims suggest that KLM is fully committed to addressing the climate crisis and has the solutions to do so. In doing so, this advertisement creates false confidence among passengers that flying can be done sustainably, even among people who are actually concerned about flying and the climate. Fossil Free wants this "*greenwashing*" to stop.

8. (...) Regularly, and in 2022 it was for example on 17 May 2022, KLM launches a discount promotion where people are encouraged to fly at a discount to a range of destinations for several weeks. Since this year, this discount promotion has been called the "KLM Real Deal Days" (...). As part of this promotion, people can fly round trip to New York for just €349, for example. KLM offered this year that if one books such a cheap flight and chooses to make a contribution towards KLM's cost of adding SAF, KLM will "double" that amount. On balance, however, this only encourages more flying and puts far more CO2 into the atmosphere than if someone were to pass up this discount offer.

9. The sustainability claims KLM makes in the context of these campaigns are, in Fossilvrij's view, misleading. Fossilvrij therefore claims in this case that KLM rectifies those statements and does not repeat them anymore. (...)

11. Fossil Free does not demand that flying be banned or that KLM close its doors. Fossil-Free does believe that the public is entitled to the truth around KLM and its product, and in particular the fact that, from a climate perspective, there is no such thing as "more sustainable" or "responsible" flying and that the only sustainable thing KLM can do is fly fewer planes. Fossil Free believes that to bring aviation in line with the Paris target, people need to be informed and social norms and awareness about flying need to change. Fossil-Free therefore wants the public not to be lulled to sleep by KLM with green talk, and then actually start believing that booking a flight with KLM actually contributes to countering the damage of climate change. The climate crisis is urgent, and the extent to which companies contribute to or hinder the achievement of climate goals should not be glossed over by companies like KLM that cause serious pollution.

KLM's position

3.8.

KLM disputes that the disputed expressions are misleading and believes it is free to communicate about its sustainability efforts. KLM disputes that Fossilvrij still has an interest in having its claims upheld, inter alia because the nineteen expressions at issue are no longer being used. KLM therefore moved that Fossilvrij be declared inadmissible in its claims, and that Fossilvrij be ordered to pay the costs of the proceedings.

3.9.

Paragraph 1.1 ("The stakes of these proceedings") of KLM's second response reads, in so far as relevant here:

1. KLM is working hard to make its operations more sustainable. KLM is replacing its current fleet with aircraft that emit tens of per cent less CO2 than their predecessors. KLM is building a good position for sourcing more sustainable jet fuel - successfully. KLM is making all kinds of operational improvements, it is partnering with start-ups and research teams to drive innovation and is also working to make ground operations (including taxiing) and on-board services more sustainable.

2. KLM does so recognising that its main business activities are not sustainable now, nor can they become so at the push of a button. It is therefore working on many projects simultaneously, each making a large or small contribution to its climate goals.

3. To ensure that KLM can fulfil its climate ambitions, KLM needs the support of its (potential) customers, employees, governments and industry partners and even competitors. KLM therefore communicates its sustainability efforts and ambitions, including through a *branding* campaign. (...)

5. Assessing whether an expression is misleading and therefore an unfair commercial practice (as referred to in Section 6:193a et seq. of the Dutch Civil Code) requires careful consideration of what the expression says, what the context of that expression is and how the average consumer will interpret it. Fossil Free states virtually nothing concrete in this regard.

6. When the expressions of KLM that are central to these proceedings are looked at in such a careful manner, it becomes clear that those expressions present an accurate picture, are nuanced and are sufficiently supported by facts.

(...)

11. KLM explained at the admissibility stage that Fossil Free has no interest in its claims. First, because KLM no longer carries the 19 expressions that the writ seeks to have banned. Second, because KLM's statements do not cause people who are considering flying less to be persuaded by the statements to fly anyway - at most, they are persuaded to travel with KLM instead of another airline.

3.10.

The contentions back and forth are discussed in more detail below, in the context of the assessment.

4The assessment

Sufficient importance

4.1.

Section 3:303 of the Civil Code provides that without a sufficient interest no one is entitled to a legal claim. The court should be reluctant to dismiss a claim on the ground that there is no sufficient interest. In principle, it must be assumed that sufficient interest exists. The following is considered in this regard.

4.2.

KLM argues that it has since ceased to carry the 19 advertisements described in the summons and that it will no longer carry them. To the extent that the expressions can still be found, it is only in archives and the like, but that does not constitute "carrying advertising".

4.3.

Fossil-Free seeks an injunction against publication, removal or removal and rectification of (in summary) statements 1 to 19 and "similar statements". To assess this, the legality of the 19 expressions must first be assessed. The parties disagree on this. Fossil Free therefore does have an interest in its claims, even if it is determined that KLM no longer carries any of these nineteen specific expressions.

4.4.

KLM further argues that the claims brought by Fossilvrij cannot lead to its ultimate goal, which is to prevent or at least limit climate change. According to Fossilvrij, however, there is a connection between that ultimate goal and the KLM advertisements it challenges.

4.5.

In the interlocutory judgment, the court referred to Fossil Free's goal (as described above under section 2.1) and the avenues by which it seeks to achieve this goal. It further considered that Fossil Free is pursuing one of these avenues with the claims brought in this case. Fossil Free emphasised at the oral hearing on 19 December 2023 that (as the parties continue to disagree on this matter) it wants it to be made clear when an expression is misleading and that a judicial opinion on the expressions made is essential for this. In this, the court sees sufficient interest.

4.6.

In conclusion, Section 3:303 of the Civil Code does not preclude the claims brought by Fossil Free.

Basis: unfair commercial practices

4.7.

The dispute focuses first and foremost on whether KLM's 19 advertisements described in the summons violate the Unfair Commercial Practices Act, sections 6:193a to 6:193j of the Civil Code.

It is true that Fossilvrij expressed in the petition that KLM is in violation of the fundamental rights referred to in the body of the summons and the Unfair Commercial Practices Act, but at the oral hearing Fossilvrij explained that by fundamental rights it refers to the right not to be misled. This right is protected by the Unfair Commercial Practices Act, so the court assumes one and the same basis for the claim. No independent meaning is attributed to the reference to fundamental rights.

4.8.

According to Fossilvrij, KLM's advertising statements also constitute an independent tort within the meaning of Section 6:162 of the Dutch Civil Code. This basis is disregarded because Fossilvrij did not explain, and moreover, it is not apparent that this basis has independent meaning next to the basis of the Unfair Commercial Practices Act. Incidentally, this does not preclude qualification of acting in breach of the Unfair Commercial Practices Act as "unlawful" (as Fossilvrij also does). An unfair commercial practice is a species of tort.

4.9.

The court will outline the assessment framework below and then apply it to the specific advertisements.

Assessment framework

4.10.

The test framework applied by the court in assessing these advertisements is as follows.

4.11.

Article 1 ("Purpose") of the Unfair Commercial Practices Directive¹ states that the purpose of the Directive is to contribute to the proper functioning of the internal market and achieve a high level of consumer protection by approximating the laws, regulations and administrative provisions of the Member States on unfair commercial practices harming consumers' economic interests.

4.12.

The Directive was implemented in the Netherlands in Section 3A ("Unfair commercial practices") of Book 6 of the Civil Code, the Unfair Commercial Practices Act (Sections 6:193a to 6:193j of the Civil Code). These articles in the BW state that consumer means a natural person not acting in the exercise of a profession or business. Furthermore, the articles state when a commercial practice is unfair and that the trader must prove that his information is correct.

4.13.

The European Commission formulated Guidelines on the interpretation and application of the Directive at the end of 2021, which should facilitate the proper application of the Directive.² These Guidelines are therefore relevant when interpreting articles 6:193a-j of the Civil Code.

4.14.

Chapter 4 ("The application of the Unfair Commercial Practices Directive in specific areas"), section 4.1 ("Sustainability"), paragraph 4.1.1 ("Environmental claims") reads, in so far as relevant here:

An "environmental claim" or a "green claim" suggests or otherwise gives the impression (in commercial messages, marketing or advertising) that a product or service **has a positive or no impact on the environment or does less damage to the environment** than competing goods or services. The goods or services in question derive their environmentally friendly character, inter alia, from their composition, the way they are produced, the way they can be disposed of or the fact that their use is more energy-efficient or less polluting. Putting forward untrue or unverifiable claims of this type is often referred to as "greenwashing". (...)

Depending on the circumstances, this may include all types of claims, information, symbols, logos, images and brand names, as well as their interaction with colours, on packaging, labels, advertising, in all media (including websites) and made by any organisation if it is considered a "trader" and engages in commercial practices towards consumers.

The Unfair Commercial Practices Directive does not provide specific rules on environmental claims.

However, this directive provides a legal basis to ensure that traders do not present environmental claims in a way that is unfair to consumers. As long as "green claims" are not unfair, the directive does not prohibit their use. On the contrary, the Unfair Commercial Practices Directive can help traders who invest in the environmental performance of their products by enabling them to communicate these efforts to consumers in a transparent manner and by preventing competitors from presenting misleading environmental claims.

4.15.

Section 4.1.1.2 ("Main principles") reads, in so far as relevant here:

Under **Articles 6 and 7 of the Unfair Commercial Practices Directive**, which deal with misleading actions and misleading omissions, **green claims must be truthful, must not be accompanied by false information**, and must be presented in a **clear, specific, accurate and unambiguous manner** so as not to mislead consumers.

Under **Article 12 of the Unfair Commercial Practices Directive**, **traders must be able to substantiate their claims with evidence** and present this evidence to the competent enforcement authorities in a comprehensible manner if the claim is disputed.

4.16.

Paragraph 4.1.1.3 ("The application of Article 6 of the Unfair Commercial Practices Directive to environmental claims") reads, in so far as relevant here:

Consequently, **the visual material and general product presentation** (i.e. design, colour choice, graphics, pictures, photos, sounds, symbols and labels) should also be a truthful and accurate representation of the extent of the environmental benefit, and not paint an overly rosy picture of the benefit achieved. For implied claims, depending on the circumstances of the case, images (of e.g. trees, rainforests, water, animals) and colours (e.g. a blue or green background or letters) may be used that evoke associations with environmental sustainability.

Environmental claims can be misleading if they are based on **vague and general statements regarding environmental benefits**, without proper substantiation of the benefit and without specifying which aspect of the product the claim refers to. Examples of such claims include "environmentally friendly", "eco", "green", "friend of nature", "ecological", "sustainable", "good for the environment", "climate-friendly" or "friendly to the environment", "non-polluting", "biodegradable", "emission-free", "low-carbon", "reduced CO₂ emissions", "carbon-neutral", "climate-neutral", as well as the more generic claims "conscious" and "responsible".

In some cases, such unsubstantiated claims may give consumers the impression that a product or activity of a trader has no negative impact or only a positive impact on the environment. Such claims may fall under Article 6(1)(a) and (b) of the Unfair Commercial Practices Directive if they may deceive the average consumer and cause him to take a transactional decision that he would not otherwise have taken.

Since terms like "conscious" and "responsible" can refer to many aspects, such as social or economic conditions, such claims, even if nuanced, can be considered misleading as they are vague and ambiguous terms.

4.17.

The interpretation of the notion of average consumer varies depending on the context. The recitals of the Directive and the case-law of the European Court of Justice refer to the notional average consumer, i.e. the reasonably well-informed, prudent and observant consumer, also taking into account social, cultural and linguistic factors. The average consumer can be expected to be willing to delve into the information offered by the trader. In doing so, the average consumer is, in principle, expected to be able to appreciate the information provided and to seek further information if necessary, and then to link information from different sources. However, this does not mean that the average consumer is always expected to be able to process information from different sources. Whether this can be expected should be assessed on the basis of the circumstances of the case.

4.18.

For the administrative enforcement of the Directive, the Consumer and Market Authority (hereinafter the ACM) has been designated as the competent authority for the Netherlands. The ACM has issued a Guideline on Sustainability Claims. In it, it has formulated rules of thumb to help companies formulate sustainability claims. These public law rules can serve as inspiration when interpreting the civil law standards framework. The Sustainability Claims Guideline issued by the ACM (version 2, 2023) provides - in summary - the following rules of thumb, among others: use correct, clear, specific and complete sustainability claims, substantiate sustainability claims with facts and keep them up to date, describe future sustainability ambitions concretely and measurably, and ensure that visual claims and labels are helpful to consumers and not confusing.

4.19.

The Advertising Code Foundation has drawn up the Dutch Advertising Code (NRC) as part of self-regulation. These rules - and the decisions of the Advertising Code Committee and the Board of Appeal based on them - colour the statutory civil law standards framework in more detail. Edition 2020 of the NRC states (among other things) that advertising may not be unfair or misleading. The Environmental Advertising Code (hereinafter: the MRC) of the Advertising Code Foundation, which was amended with effect from 1 October 2000 and applied until 1 February 2023, describes that environmental claims may not contain statements, images or suggestions that could mislead consumers about environmental aspects of the advertised products, or about the advertiser's contribution to maintaining and promoting a clean and safe environment in general. Environmental claims must also be demonstrably correct. The more absolute the environmental claims are, the tougher the requirements for evidence become.

General comments for the assessment of KLM's 19 manifestations

4.20.

In assessing these 19 advertisements against the standards framework set out above, what matters first is whether these advertisements are factually correct. Also important is whether the information provided and/or omitted is misleading. This includes the context in which the information was provided and/or omitted.

4.21.

KLM has ambitions in the field of CO₂ reduction and in that context is committed to (among other things) fleet renewal, the use of aviation fuel other than fossil fuel (SAF) and operational improvements. The court first of all stated that KLM is free to inform consumers about its ambitions and the way in which KLM is working to realise its ambitions. KLM is also free to advertise flying with KLM. Thereby, the use of the term "sustainable" is not

unacceptable, but when using this kind of vague terms about environmental benefits with a social connotation, it is up to the user (KLM) to make clear to the consumer what is meant by it in this specific case. Otherwise, there is a risk of creating the impression among consumers that a KLM product or activity has no (or less) negative impact on the environment than it actually does. And that could be misleading. The above does not mean that KLM should warn consumers by stating in its expressions that today's aviation is *not* sustainable. The bottom line is that consumers should be given honest information.

4.22.

The court is mindful of the fact that in this day and age, consumers like to be informed about the environmental aspects of the products they use. Consumers are concerned with sustainability and the desire to make better choices in this regard increasingly plays a role in the decision to buy or not to buy a particular product. This also applies to the decision to fly or not (and if so, under what conditions). Expressions that respond to this and create an impression about the "sustainability" of a product or the provider may therefore influence the decision to buy a product from KLM.

4.23.

With regard to the 19 KLM advertisements described in the summons, against this background, it is considered and ruled as follows.

4.24.

Advertisements 1 to 13 are part of the "Fly Responsibly" campaign, which KLM says is primarily an awareness campaign.

Expression 1 (location: social media)

Fortunately, the way we travel is changing

And move together towards a more sustainable future

Because more sustainable travel is our greatest adventure ever

Together towards more sustainable travel

4.25.

This is the introduction that is part of an (advertising) video that can be found on KLM's Fly Responsibly website.

4.26.

Advert 1, according to KLM, encompasses an ambition that is recognisable as such and expressed in its pioneering role. An ambition accompanied by the repeated statement, "Yes, we are an airline and we realise that aviation today is far from sustainable, despite the fact that we have been working hard for some time to improve every aspect of our operations".

4.27.

Nevertheless, this advertisement contains an environmental claim based on, what paragraph 4.1.1.3 of the European Commission Guidelines calls, vague and general statements regarding environmental benefits ("the way we travel (is) changing", "more sustainable" and "more sustainable"). This advertising is not sufficiently concrete about what environmental benefit will be achieved and to which aspects of (flying with) KLM this then refers. Nor does it make it clear to consumers what KLM has in mind specifically to achieve certain objectives. The fact that additional information can be found on KLM's Fly Responsibly website does not change this. Particularly since it is insufficiently clear from the expression that this is merely an ambition of KLM. KLM posits quite firmly that consumers are heading towards a more sustainable future with it, while it is not clear whether and if so how flying with KLM contributes to this.

4.28.

Therefore, advertisement 1 is misleading and qualifies as a prohibited trade practice.

Expression 2 (location: physical advertising)

Join us in creating a more sustainable future

4.29.

This concerns a poster on a billboard (at the time) at Schiphol Airport showing a child sitting on a swing, against a background of sky, water and mountains.

4.30.

In fact, KLM's advertisement here (as with advertisement 1) includes the message that consumers will join KLM on the road to a more sustainable future. The expression is considered misleading for the same reasons as mentioned above for expression 1. In addition, the background reinforces the impression that there are environmental benefits to be gained by "joining KLM" without making it clear in what way.

Expression 3 (location: "Fly Responsibly" website)

With Fly Responsibly, KLM is taking the lead in creating a more sustainable future for aviation. We recognise the urgent need to limit global warming. That is why we are committed to the goals of the Paris climate agreement. But we can only succeed if we all work together. So join us today for a more sustainable future.

4.31.

Advert 3 opens and ends with a vague and general statement about environmental benefits ("With Fly Responsibly, KLM is taking the lead to achieve a more sustainable future for aviation" and "So join us today for a more sustainable future" respectively). It lacks sufficient clarity about the (concrete) environmental benefits and to which aspects of the product they relate.

4.32.

In recognition of the urgent need to limit global warming, KLM has, according to this advertisement, committed itself to the goals of the Paris climate agreement. This can mean nothing other than that KLM has endorsed these objectives in the sense that it has aligned its own objectives with them. Clearly, the realisation of the Paris Climate Accord objectives does not, at least not solely, depend on KLM and the realisation of its objectives. But advertisement 3 does suggest that the realisation of KLM's own objectives - in line with the Paris Climate Agreement - is feasible. While this feasibility is made contingent on cooperation with others ("all of them"), it is not fleshed out concretely, measurably and specifically. How consumers can "connect" and how this contributes to "a more sustainable future" remains entirely undefined.

4.33.

In view of the above, advertisement 3 is misleading and a prohibited trade practice.

Expression 4 to 10 on the "Fly Responsibly" website at "What we do"

4.34.

Advertisements 4 to 10 from the "Fly Responsibly" campaign concern KLM's own measures.

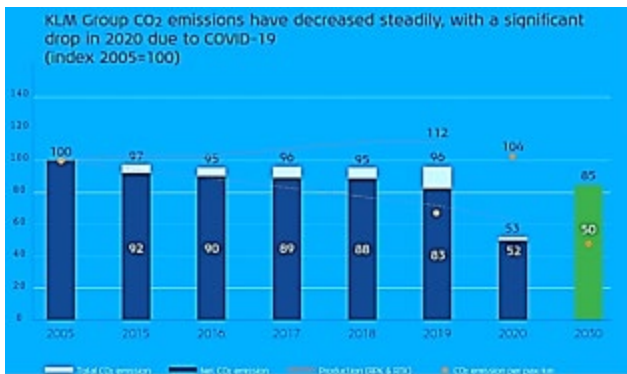
Expression 4

The aviation industry's ambition is to achieve net zero CO2 emissions by 2050 and to underline this promise, we are developing our own path based on the Science Based Targets initiative.

This path consists of several measures, each of which will contribute to reducing our CO2 emissions. Such as fleet renewal, operational improvements and CO2 offsetting. But by far the biggest contribution will come from replacing fossil aviation fuel with sustainable aviation fuel, or SAF (Sustainable Aviation Fuels).

Expression 5

KLM Group's CO2 emissions have been falling steadily.



Expression 6

Sustainable jet fuel: a promising solution.

[...] So why doesn't KLM just switch to SAF? Unfortunately, it's not that simple. Global production of SAF covers only about 0.1% of the aviation industry's total fuel consumption and is inhibited by a status quo:

there is very little production capacity available worldwide

As a result, SAF is at least 2 to 3 times more expensive than regular paraffin

due to high prices, very few airlines are willing - and able - to buy SAF and because there is so little demand, production capacity is not being scaled up

To break this deadlock, a strong signal is needed from the aviation industry to step up and boost SAF production, and ultimately drive down prices. SAF is a crucial component of the aviation industry's trajectory to achieve zero CO₂ emissions by 2050. So it is important that we succeed.

Therefore, KLM has decided to act as an industry leader in creating this demand-driven signal. KLM currently has a significant share of the global SAF market, but this still covers less than 1% of our entire fuel consumption. To meet our climate ambitions, we aim to use 10% SAF by 2030. To this end, we are working with SkyNRG to build Europe's largest SAF plant. Moreover, since January 2022, we have been blending a small percentage of SAF on KLM flights departing from Amsterdam.

Yes, we are currently talking about small quantities of SAF, which produce only small reductions in CO₂ emissions. Not only can we create this market, but we can - and will - lead the way.

Expression 7

First passenger flight on sustainable synthetic paraffin.

[...] This first flight is an important milestone in the development of sustainable synthetic paraffin as a viable alternative to fossil fuels. In addition, it is a major step towards a sustainable future for the aviation industry.

Expression 8

Smaller carbon footprint, more forests.

For ten years, we have offered a simple service that allows you to offset your personal share of your flight's CO₂ emissions. With our CO₂ZERO service, you can reduce the impact of your flight on the environment (...).

Expression 9

Together, we can make your business trip more sustainable.

KLM is not alone in its desire to do business more sustainably. Many other companies, in all kinds of industries, think so too. We are partnering with such companies to promote the widespread availability of sustainable jet fuel and to make it more economically competitive with fossil paraffin.

Expression 10

STEP BY STEP TOWARDS A SUSTAINABLE FUTURE.

PROMOTING SUSTAINABILITY CAN BE DONE IN ALMOST ALL ASPECTS OF OUR BUSINESS. FOR EXAMPLE, EVEN A SMALL REDUCTION IN FLIGHT WEIGHT HAS A NOTICEABLE EFFECT.

4.35.

The court considers these expressions on the website in relation and context, and in the light of the context, and then addresses specific parts of them.

4.36.

KLM expresses an ambition in these expressions and mentions at a number of points what it is doing to achieve this ambition. The goal is (expressions 4 and 6) to achieve "net zero CO2 emissions" by 2050. KLM has sufficiently explained that it is actually making efforts to reduce CO2 emissions (or their consequences). The fact that KLM does not aim to fly less, but mainly to reduce the harmful effects cannot be held against it, as an airline. Nevertheless, the Court came to the conclusion that KLM did not sufficiently substantiate that the solutions it mentioned are of such a nature that they justify the text of the claims and the expressions (also considered together). To this end, the following is relevant.

4.37.

KLM uses terms like "an important milestone" and "promising solution" and "a big step towards a sustainable future". KLM lists measures such as fleet renewal, operational improvements and CO2 offsetting and then states "but by far the largest contribution will be made by SAF". This suggests that a lot can already be expected from the other measures KLM is betting on and that SAF will contribute much more to the goal of achieving "net zero CO2 emissions" by 2050. This paints too rosy a picture, as it follows from the explanations accompanying the measures that they are currently only marginally reducing CO2 emissions and the negative environmental aspects of flying. It cannot be excluded that this will improve in the future, but given all the uncertain factors in that area, it does not benefit KLM to paint the rosy picture it did in the expressions. As such, the expressions are, with one exception, misleading.

Expression 4

4.38.

Expression 4 states that the measures KLM is taking "all contribute" to reducing CO2 emissions. CO2 offsetting is also listed as an example of the measures. This refers to an amount customers can pay to contribute to reforestation (*carbon credits*). KLM acknowledges that measures that see CO2 compensation (at best) have the effect of reducing the negative aspects of CO2 emissions. CO2 emissions themselves are not reduced by something like reforestation. This part of the expression is therefore factually incorrect. It creates a false impression about the product's climate impact that may influence the consumer's decision and is thus misleading.

4.39.

The court does not consider decisive in this respect that KLM underlines the ambition of "net zero CO2 emissions by 2050" by developing its own pathway based on the *Science Based Targets initiative*. Indeed, KLM does not base specific claims on the SBTi validation.

Expression 5

4.40.

The table outlines the KLM Group's CO2 emissions over the period from 2005 to 2020 and an ambition for 2030. Fossil Free has not sufficiently highlighted why this table would be incorrect or misleading. Given the statistics, the text accompanying the table that CO2 emissions have been steadily decreasing is not incorrect. Therefore, the statement does not constitute an unfair commercial practice.

Expression 6

4.41.

SAF is presented here as "sustainable" aviation fuel. Although SAF can contribute to reducing the harmful environmental aspects of flying, the term "sustainable" here is too absolute and not concrete enough. The statement

that it is a "promising solution" also paints too rosy a picture. KLM then does nuance the share of SAF and its application on a larger scale to some extent, but given the firm starting claim "Sustainable aviation fuel: a promising solution", it does not do so sufficiently. At the moment, SAF's share in total fuel consumption (and thus in CO2 emission reduction) is still very limited due to various reasons. A more substantial share can only be expected in the distant future, and thus uncertain. The expression is therefore misleading.

Expression 7

4.42.

KLM reports that "the first" passenger flight has taken place on synthetic paraffin and it describes this as an "important milestone" in the development of a viable alternative to fossil fuels. It is "a major step towards a sustainable future for the aviation industry". All this raises positive expectations among consumers about flying on synthetic paraffin. KLM explained at the oral hearing that no more (passenger) flights on synthetic paraffin took place after this one flight. It was an experiment. Nor are any new flights on synthetic paraffin planned at the moment. This is not clear to the person reading the expression. The advertisement therefore suggests more than is actually the case and paints too rosy a picture. The advertisement is therefore misleading.

Expression 8

4.43.

With this expression, KLM addresses the possibility for KLM customers to make a financial contribution to a reforestation project selected by KLM (*carbon credits*). The term CO2ZERO service thereby creates the impression that customers thereby (can) contribute in a relevant way to "CO2ZERO" or "zero CO2 emissions". This is an absolute and far-reaching term. This impression is not justified and may well be essential when choosing the product. Added to that, the statement says "with our CO2ZERO service, you can reduce the impact of *your* flight on the environment". And it talks about *your* share of your flight's emissions. This suggests that there is a link between the customer's contribution and reducing the negative environmental aspects of the customer's own flight. It gives the impression that the customer can completely erase the negative effects of CO2 emissions caused by him. This is not the case. While the system of more forests is to be welcomed in itself, its impact is uncertain because, for example, it is not clear whether the trees will remain permanently. To the extent that any contribution is made by the reforestation project to reduce the impact of CO2 emissions on the environment, there is no direct link between the customer's tangible contribution and the impact of CO2 emissions from its flight. Against this background, the statement is misleading.

Expression 9

4.44.

This expression does not target consumers within the meaning of the Unfair Commercial Practices Act and therefore falls outside the standards framework outlined above. Insofar as the claims relate to this expression, they are therefore dismissed

Expression 10

4.45.

The expression begins with "step by step to a sustainable future". In this context, the court refers to its previous considerations on vague and general statements about environmental benefits. KLM then describes what it apparently has in mind when moving towards a "more sustainable future", namely "Promoting sustainability can be done in almost all aspects of our business". In doing so, KLM does not make sufficiently clear which concrete steps it is then taking and how these lead to environmental benefits. The advertisement still mentions the noticeable effect of a small decrease in flight weight, but specifications are lacking, as is the marginal effect on "sustainability". The advertisement is thus misleading.

Expressions 11 to 13 on the "Fly Responsibly" website under "What you can do"

4.46.

Advertisements 11 to 13 from the "Fly Responsibly" campaign deal with consumer action. These expressions address consumers directly. They are not about aspirations, but about what consumers can actually expect when buying a particular product.

Expression 11

What you can do

[...] If you do decide to fly, there are always ways to reduce your impact on the environment.

Expression 12

CO2ZERO

[...] If you want to further reduce the environmental impact of your flight, our CO2ZERO offer now allows you to choose a number of other sustainable jet fuel options in addition to the reforestation programme.

Reforestation can naturally offset CO2 emissions from the aviation industry. With reforestation, you pay a small contribution to offset (part of) the environmental impact of your flight. This does not affect the direct emissions of the flight itself, but you help by planting trees that reabsorb the CO2 from your flight.

The new SAF-based options in CO2ZERO have a double benefit for the environment. First, you directly reduce the net CO2 emissions of a flight. Second, you help grow the SAF market.

Through these initiatives, KLM aims to make flying more sustainable in a fully transparent way. [...] Of the SAF revenues received through ticket prices and the expanded CO2ZERO programme, 100% will be used directly, transparently and exclusively to purchase new SAF and promote the production of SAF worldwide.

Expression 13

Together we can make a bigger difference

Only if we all work together can we really make a difference. All aviation industry stakeholders, all airlines, all manufacturers - the whole business community. Together we can advance the production of sustainable jet fuel, accelerate our fleet renewal and achieve more faster and better. That is why we have launched this initiative calling on everyone to fly responsibly: "Fly Responsibly". We kindly invite you to join us in making aviation more sustainable.

Expression 11

4.47.

This expression is not factually incorrect and Fossil Free has also not sufficiently explained why this expression violates the standards framework outlined above. The expression makes no claim and is not misleading or unfair.

Expression 12

4.48.

In this expression, KLM discusses the possibilities of contributing to SAF and a reforestation project. In doing so, it uses a number of absolute and/or vague terms, namely "CO2ZERO" and "sustainable aviation fuel". The court refers to what it has noted on this subject in the previous expressions. The options KLM describes in the expression do not result in zero CO2 emissions or undo the harmful environmental aspects of flying to such an extent that the use of the heading "CO2ZERO" is justified. The options mentioned by KLM currently achieve a marginal effect. Moreover, here too, a direct link is wrongly suggested between a customer contribution and the environmental impact of *his* flight. The expression is thus misleading.

Expression 13

4.49.

KLM is in fact appealing here to all stakeholders to take steps to make aviation more sustainable. The expression contains no claim about KLM or its products. Fossil Free has not provided sufficient evidence to conclude that the expression is nevertheless misleading or unfair.

Expression 14 to 16: CO2ZERO

4.50.

Advertisements 14 to 16 are part of the CO2ZERO marketing, which KLM says is not an advertising campaign (nor a *branding* campaign), but the name of an optional product that allows consumers to contribute to reforestation projects and SAF.

Expression 14

CO2ZERO

Reduce your impact

Expression 15

CO2ZERO

At KLM, we are investing in a range of initiatives to reduce our footprint. You too can do your bit to make aviation a more sustainable sector. Let's change the future together!

With our reforestation programme, you offset (part of) the environmental impact of your flight. It does not affect the direct emissions of the flight itself, but your contribution helps restore forests that absorb CO2.

How you can help [...] And, you can do more: get involved by contributing to one (or both!) of our sustainable programmes so that together we can create a better future. Reforestation is a contribution from nature that reduces CO2 emissions outside the aviation industry, but SAF has a direct impact on making flights more sustainable.

Restore forests to absorb [x] kg of your CO2 emissions

Contribute to sustainable jet fuel and reduce your CO2 emissions by [x] kg

Your CO2 absorbed by reforestation 0 kg CO2

Your CO2 reduced by SAF 0 kg CO2

Expression 16

Our CO2ZERO programme includes not only SAF, but also our reforestation project. You are in control: choose whether you want to contribute fully to SAF or prefer a mix of both initiatives.

Expressions 14 to 16

4.51.

KLM here uses the absolute designation "CO2ZERO" and the stilted "Reduce your impact" (with an image of green leaves around an aircraft). In this context, the court refers to its previous considerations on expressions stating "CO2ZERO" or "zero CO2 emissions". The expressions in this case also suggest more than can be fulfilled. KLM is in fact urging consumers to "change the future together" and "create a better future together". This creates the impression that with the reforestation programme offered by KLM and its contribution to SAF when flying, important steps are being taken to make a positive contribution to the future, in that aviation is becoming a "more sustainable industry". In doing so, KLM gives too rosy a picture of the (small) environmental benefits that can be achieved with a customer contribution to reforestation or SAF. Moreover, again, it wrongly suggests a direct link between a customer contribution and the environmental impact of *their* flight.

Expressions 17 to 19: KLM Real Deal Days

4.52.

Advertisements 17 to 19 are part of the "KLM Real Dagen" marketing.

Expression 17

The Real Deal Days are all about travelling for moments that really matter. Because when we travel more consciously, all moments are even more beautiful.

KLM is investing heavily in sustainable fuel and we invite you to help us do so. If you choose this option during the Real Deal Days, KLM will double this amount with the Sustainable Fuel Bonus.

Expression 18

What are the KLM Real Deal Days?

KLM Real Deal Days is a 2-week price promotion by KLM. This promotion offers discounts on more than 50 destinations worldwide. During the promotion, the Sustainable Fuel Bonus also applies: if you book a ticket during the Real Deal Days and choose to invest in sustainable fuel, KLM will invest with you and double your contribution. Because when we travel more consciously, all moments are even more beautiful.

What is the Sustainable Fuel Bonus?

KLM is taking the lead for a more sustainable future for aviation. That is why we are investing heavily in sustainable fuel (also known as Sustainable Aviation Fuel or SAF for short). If you choose to contribute to our sustainable fuel programme during the Real Deal Days, KLM will double this amount with the Sustainable Fuel Bonus. Select one of the three options Sustainable Aviation Fuel is part of and reduce your expected CO2 emissions. KLM will double every euro you contribute to SAF.

Is KLM also doubling your contribution to reforestation?

Fantastic if you choose to contribute to reforestation, only here the Sustainable Fuel Bonus does not apply. That applies during the Real Deal Days promotion only to sustainable aviation fuel (Sustainable Aviation Fuel or SAF for short)....

Does the Sustainable Fuel Bonus also apply on KLM Holidays package holidays?

The Bonus applies to air ticket bookings only. Package holidays fall outside the Sustainable Fuel Bonus, as a different sustainability offer applies to KLM Holidays bookings. Are you booking a complete package holiday through KLM Holidays? KLM accounts for the expected CO2 impact of your share of the flight by default. All amounts are directly invested by us in the CO2OL Tropical Mix reforestation project in Panama.

Why is KLM taking this initiative?

We believe it is important for our customers to make a conscious choice to fly. We understand that people are concerned about climate change and take our responsibility to reduce the impact of our operation on our environment. Besides fleet renewal and improving operational innovation and efficiency, we want to reduce emissions by encouraging the production of sustainable fuel. We have therefore chosen to blend 0.5% SAF as standard on flights from Amsterdam. Customers who want to do something extra can contribute to the purchase of even more sustainable fuel through CO2ZERO.

How is KLM reducing its carbon footprint?

A major contribution to the sustainability policy is KLM's major investment in fleet renewal, with the introduction of more fuel-efficient and quieter aircraft. In addition, KLM saves fuel through operational efficiency, including optimisation and reduction of on-board weight. The use of electric ground equipment is key to reducing CO2 emissions from ground processes. KLM is also a pioneer in sustainable jet fuel, which reduces CO2 emissions by at least 75% compared to standard fossil fuel. We also work with many different parties to shape the future of flying, for example through the development of new, energy-efficient aircraft, the use of 100% renewable energy; climate-neutral aviation logistics operations and the impact of sustainable aviation on passengers. Encouraging entrepreneurship and training new talent is also an important pillar.

What else is KLM doing in terms of sustainability?

See more at *Fly Responsibly* | *KLM.com*

Expression 19 (during a radio broadcast)

0:05:10

It's Real Deal Days at KLM, deals for moments that really matter. Like having adventures together in Aruba. Starting from €599.

There are only two real deal days left.

So take a quick look, at KLM.co.uk

0:05:36

If you choose sustainable fuel during KLM Real deal days, KLM will double your contribution. Because when we travel more consciously, all moments are even more beautiful.

Expressions 17 to 19

4.53.

KLM is free to express its ambitions and to advertise flying. Yet these expressions are misleading on a number of counts. KLM states in the expressions that it is investing heavily in sustainable fuel. The term "sustainable fuel", which often recurs in the expressions, is too absolute. Furthermore, KLM does not make sufficiently clear to consumers what it is investing in SAF and what environmental benefits can be achieved. In essential parts of these expressions, KLM creates too rosy a picture and makes (implicit) claims that are insufficiently substantiated. Such as that "sustainable jet fuel" reduces CO2 emissions by "at least 75%" compared to fossil fuel. KLM uses the term "more conscious travel" and creates the impression that flying with KLM is sustainable, when in fact it is a price stunt. Although the statements are correct and informative in parts, the court concludes that the statements are misleading when viewed in their entire context.

Manipulation requirement

4.54.

KLM made the 19 statements so that its public would consider them in its decision-making. In other words, it was reasonably foreseeable for KLM that the economic behaviour of its public would be disrupted in the event of factually incorrect, incomplete and/or misleading information. It is sufficiently plausible that in the event of such information, the average consumer takes or may take a decision about an agreement with KLM that he would not have taken otherwise. Partly relevant here is that the average consumer, from an alertness to climate-related issues, is sensitive to "green" claims.

Statement of law: 15 expressions misleading

4.55.

From what has been considered and ruled above, it follows that the claimed declaratory judgment is admissible to the extent that advertisements 1, 2, 3, 4, 6, 7, 8, 10 and 12 (as described above and suggesting that flying can be or become sustainable) and advertisements 14, 15, 16, 17 18 and 19 (as described above and suggesting that the purchase or contribution to a "compensation" product actually reduces, absorbs or compensates for part of the climate impact of flying) are misleading and unlawful and that KLM thereby violates the Unfair Commercial Practices Act.

Ban on expressions

4.56.

The dispute then focuses on the question of civil law sanctions for these prohibited business practices by KLM.

4.57.

The Court finds, in the absence of sufficient evidence to the contrary, that KLM no longer carries any of the fifteen advertisements assessed as misleading. The claim seeking an injunction against publishing these fifteen

advertisements is therefore not allowable. Although KLM maintains that (also) these advertisements were lawfully made, it has, after reconsideration, decided to "sit on the safe side" and no longer carry them. There are no indications that KLM does intend to carry the 15 unlawful expressions again in the future. As such, there is no imminent breach of its legal duty necessary for an injunction.

4.58.

Similarly, the claim seeking an injunction against the disclosure of expressions similar or similar to those found to be misleading is not admissible. This is because it cannot be sufficiently determined in advance which "similar expressions" fail the test under the Unfair Commercial Practices Act. In this context, it is particularly important that the outcome of this test always depends on the circumstances of the case. Fossielvrij claims a ban that is unlimited in time, while it cannot be ruled out that developments take place as a result of which (parts of) the 15 expressions can no longer be considered misleading. Imposing a ban on "similar expressions" is so broad that it cannot pass the test of Article 10 ECHR. In the absence of clarity about the scope, the measure could have a *chilling* effect, causing KLM to refrain from making statements more than necessary. In view of this, the measure claimed is not proportionate.

No removal order and no rectification

4.59.

The order to remove the nineteen expressions and expressions varying therefrom is not admissible. To this end, reference is made to what has been considered and ruled above under 4.57 and 4.58. An order to remove advertisements no longer carried is meaningless. To the extent the claimed injunction concerns advertisements similar to the misleading advertisements assessed, it cannot be awarded. The debate in this case did not concern advertisements other than the 19 disputed advertisements.

4.60.

With regard to the claim for an order for rectification, the following is considered. Section 6:167 of Book 6 of the Dutch Civil Code provides, in so far as relevant here, that if a person is liable towards another person under Title 3 of Book 6 of the Dutch Civil Code in respect of an incorrect or misleading publication of factual information due to incompleteness, the court may order him, at the request of that other person, to publish a rectification in a manner to be specified by the court. It is established that KLM no longer (publicly) carries the 15 misleading advertisements. Fossielvrij does not explain, or at least not sufficiently, that because of these advertisements from the past, the average consumer still takes or may take a decision on an agreement that he would not have taken otherwise. That, according to Fossielvrij, the expressions contributed to the prevailing incorrect image of flying in general is insufficient to justify the rectification claimed. In this context, it is also important that this case (and thus the inadmissibility of the 15 expressions) is expected to receive plenty of media attention. The claimed rectification order is therefore dismissed.

4.61.

The claim for an injunction against a warning text is also dismissed. The Unfair Commercial Practices Act provides no basis for such an order.

Litigation costs

4.62.

With regard to part (i) of claim VIII ("legal costs and fees"), the following is considered. Fossil Free does not explain, or at least not sufficiently, that it incurred reasonable costs as referred to in Section 6:96(2) of the Civil Code.

Section 1018l(2) Rv can only be applied in case of a judgment pursuant to section 1018i Rv, i.e. a judgment establishing a collective damage settlement. This is not the case in this instance.

4.63.

As the party mainly found against, KLM will be ordered to pay the costs of the proceedings. These are estimated on the side of Fossilvrij up to this judgment at € 125.03 for summons costs, € 2,837.00 for court registry fees and € 15,249.50 for lawyer's fees (three and a half points, rate VIII), in total € 18,211.53. The subsequent costs are awarded in the manner stated in the decision.

5The decision

The court:

5.1.

declares that the advertisements 1, 2, 3, 4, 6, 7, 8, 10 and 12 described in this judgment which suggest that flying can be or become sustainable and the advertisements 14, 15, 16, 17, 18 and 19 which suggest that the purchase or contribution to a "compensation" product actually reduces, absorbs or compensates for part of the climate impact of flying are misleading and unlawful and that KLM thereby contravenes the Unfair Commercial Practices Act;

5.2.

orders KLM to pay the costs of the proceedings, so far estimated at € 18,211.53 on the part of Fossilvrij, to be paid within fourteen days of the summons to that effect; if KLM does not comply with this order in time and the judgment is subsequently served, it must

Pay an additional €92.00, plus costs of service;

5.3.

declares this order for costs to be provisionally enforceable;

5.4.

Dismisses the more or otherwise claimed.

This judgment was rendered by M.R. Jöbsis, J.W. Bockwinkel and R.C.J. Hamming, Judges, assisted by A.A.J. Wissink, Registrar, and was pronounced in public on

20 March 2024.

Annex referred to in 3.1 (the claims brought by Fossil Free)

Fossil Free claims that the court should rule, in so far as possible enforceable:

claim I: exclusive advocate

That Fossil Free is admissible in this collective action procedure and is appointed as exclusive advocate;

claim II: definition narrowly defined group

if the court is of the opinion that it must determine for which narrowly defined group of persons the exclusive representative represents the interests in this collective action within the meaning of Section 1018e(2) Rv: that this collective action concerns the following group of natural persons, namely all natural persons residing in the Netherlands at the time the writ of summons is issued, and those who are born and come to reside in the Netherlands after the date of this writ of summons;

claim III: opt-out possibility

that anyone residing or domiciled in the Netherlands for a period of three months after the announcement within the meaning of Section 1018f(3) Rv of the judgment appointing the exclusive representative of interests will have the opportunity, by written notice to the registry of the court, to withdraw from the representation of their interests in this collective action;

claim IV: declaratory judgment

That it be declared that:

I. the advertising statements #1 to #13 made by KLM as set out in Chapter 5 of the body of the subpoena, suggesting that flying can be or become sustainable, for reasons set out in the body of the subpoena, are misleading and

unlawful and that KLM is thus in breach of the fundamental rights referred to in the body of the subpoena and the OHP Directive; and

the advertisements #14 to #19 made by KLM as described in chapter 5 of the body of the writ, suggesting that the purchase or contribution to a "compensation" product actually reduces, absorbs or compensates for part of the climate impact of flying for reasons as stated in the body of the writ, are misleading and unlawful and that KLM thus violates the fundamental rights referred to in the body of the writ and the OHP Directive;

claim V: prohibition and injunction

(i) That KLM be banned from entering into any action no later than one week from the date of the judgment to be given in this matter:

a. to make public or cause to be made public in any form or manner the advertisements #1 to #19 as described in Chapter 5 of the body of the writ, or advertisements with text equal or similar thereto, as well as in which it is suggested by commendatory wording that flying, with or without KLM, can be done in a manner from the point of view of climate change "sustainable" or "responsible";

(ii) That KLM be ordered to:

a. within one week after the date of the judgment to be given in this matter, to remove and keep removed, at its own expense, advertising statements #1 through #19 as described in Section 5 of the body of the writ, and statements varying therefrom but having substantially the same purport, from all media on which such statements have been disseminated, including but not limited to KLM's website, its social media channels, leaflets, flyers and time sheets distributed by KLM itself, (video) advertisements online or in print media, or otherwise; and

b. within one week of the date of the judgment to be delivered in this matter, rectify at its own expense the advertisements #1 to #19 as described in section 5 of the body of the writ by:

i. sending letters to all persons and institutions to whom KLM issued tickets between 1 December 2021 and 23 May 2022, on KLM letterhead, using KLM's usual house style for correspondence with its customers, by post and by e-mail containing, with the exception of the addressing dating and closing, otherwise only the text as shown in Annex A to the summons, or any other text of the same nature and purport that the Court deems appropriate, and without in any other way detracting from the purpose and purport of the rectification (or the recognisability of the rectification);

ii. to place a clear and legible half-page rectifying advertisement, to be prepared in KLM's house style, in five national newspapers (Trouw, AD, Telegraaf, Volkskrant and NRC) on the back page of those newspapers, without any comments or additions in any form with the text as shown in Annex B to the summons, or such other text of the same nature as the court deems appropriate, formatted in accordance with good printing practice, in a red frame with KLM's logo, under the heading "RECTIFICATION";

iii. for four weeks, or such period as the court deems appropriate, to post a clear and legible rectifying text, to be drafted in KLM's house style, on all its online marketing communications including banners and all social media accounts (Instagram, Twitter, LinkedIn, etc.), which will remain visible while scrolling in any direction, with the text and in the form as set out in Annex C to the summons, or such other text of the same nature as the court deems appropriate;

c. within three days of the dispatch of the above-mentioned rectification letters, send to counsel for Fossil Free a copy of one of the rectification letters sent, dated but in which the details relating to the addressee have been rendered illegible, accompanied by a confirmation issued by a Dutch bailiff or notary public that the rectification was sent in that form by KLM to the group of persons and institutions specified in the judgment; and

d. within one week of the date of the judgment to be given in this case, to display or cause to be displayed, at its own expense, in a prominent place on the homepage of the KLM website, the website booking tool and on the airline

tickets issued for its flights, a clearly legible warning text reading "Aircraft consume fossil fuel and contribute to climate change", in KLM's house style and in a font larger than the smallest font displayed in the same place;

claim VI: penalty payment

that which is claimed under V, on pain of forfeiture of a penalty payment of EUR 100,000.00, or such other amount as the Court considers appropriate, for each time that KLM acts in full or in part contrary to (one or more parts of) the prohibition and/or (one or more) orders claimed under V, in such a way that this penalty payment will be due as many times as (parts of) the said prohibition is violated and/or (parts of) the said orders are not complied with, as well as a penalty payment of EUR 25.000.00 or any other amount deemed appropriate by the Court, for each day that the violation or non-compliance in question continues, counting each part of a day as a whole;

claim VII: legal costs and fees

Order KLM to compensate Fossilvrij for the extrajudicial costs and (litigation) expenses (Section 6:96 BW and Section 1018l(2) Rv), being:

(i) the full extrajudicial costs incurred by Fossil Free, to be increased by the statutory interest from the date of the judgment to be given in these proceedings until the date of full satisfaction, to be made out by statute if necessary and to be settled in accordance with the law; and

(ii) the costs that Fossil Free will incur in connection with the actions that Fossil Free will be expected to carry out in its capacity as (co-)exclusive advocate until the final judgment, to be increased by the statutory interest from the date of the final judgment to be rendered in these proceedings until the day of payment in full, to be made up by statement, if necessary, and to be settled in accordance with the law;

which amounts (i) and (ii) can be further budgeted.

The annexes referred to in subsection (b) of clause (ii) of claim V read:

ANNEX A

Text proposal for rectification letters to be sent by KLM to its customers.

Subject: rectification on our sustainability claims

Dear [NAME]

KLM apologises for making incorrect and misleading statements about the sustainability of flying and about the possibility of so-called CO2 compensation in its advertisements and on its website. With this letter, KLM wants to correct the incorrect impression created by its marketing and advertising.

Scientific consensus: flying harms the climate

There is scientific consensus that a rapid and drastic reduction of greenhouse gas emissions, such as CO2, in all sectors is needed to maintain the reasonable chance of limiting global warming to 1.5°C as agreed in the Paris Climate Agreement. The next few years will be decisive in this regard.

Dangerous climate change is already being felt around the world. However, global greenhouse gas emissions continue to rise and the world is heading towards catastrophic warming. More information can be found here .

Burning fossil fuels, such as paraffin in aircraft engines, releases a lot of CO2. This is the main cause of dangerous climate change. So flying exacerbates climate change. Flying also has other effects, such as nitrogen emissions and condensation trails, which have a significant impact on the climate. Booking a flight is the highest-emitting product for consumers to buy.

Flying less is the only thing KLM can do to limit climate damage

Alternative fuels (including "sustainable aviation fuels" or "SAF") and future technology cannot make flying "sustainable" in time, in line with the climate target of the Paris Climate Agreement. Flying must be reduced

immediately to meet that climate target. It was therefore incorrectly misleading that we spoke of "sustainable flying". More information on the need to reduce flying is available here.

However, KLM's policy is to grow and emit more CO2.

KLM plans to keep growing. As long as we grow, our total CO2 emissions will increase. Our suggestion that our emissions will decrease and that flying can be done "sustainably" or "responsibly", and by flying KLM a "more sustainable future" is closer to being achieved, was false and misleading.

Climate damage is not mitigated by making a financial contribution to KLM's CO2ZERO programme.

We ran a marketing campaign called "CO2ZERO". In it, we campaigned consumers to make small financial contributions to reforestation projects or the cost of using small amounts of alternative fuels. We said this would "offset", "reduce" or serve as "offsetting" the negative climate impact of flying. This is just not true. The payments do not contribute to achieving the climate target of the Paris Climate Agreement. The name "CO2ZERO" of our marketing campaign, was incorrect and misleading.

The only way to meaningfully reduce the impact of flying on the climate and contribute to meeting climate goals is by not flying.

Sincerely,

[name and signature CEO]

ANNEX B

Text proposal for rectification to be published by KLM in Dutch newspapers

RECTIFICATION

KLM has made incorrect and misleading statements about the sustainability of flying and about the possibility of so-called CO2 offsetting in its advertisements and on its website. In this place, KLM wants to correct the incorrect impression created by its marketing and advertising.

Scientific consensus: flying harms the climate

There is scientific consensus that a rapid and drastic reduction of greenhouse gas emissions, such as CO2, in all sectors is needed to maintain a reasonable chance of limiting global warming to 1.5°C, as agreed in the Paris Climate Agreement. The next few years will be decisive in this regard.

Dangerous climate change is already being felt around the world. However, global greenhouse gas emissions continue to rise and the world is heading towards catastrophic warming. More information can be found here .

Burning fossil fuels, such as paraffin in aircraft engines, releases a lot of CO2. This is the main cause of dangerous climate change. So flying exacerbates climate change. Flying also has other effects, such as nitrogen emissions and condensation trails, which have a significant impact on the climate. Booking a flight is the highest-emitting product for consumers to buy.

Flying less is the only thing KLM can do to limit climate damage

Alternative fuels (including "sustainable aviation fuels" or "SAF") and future technology cannot make flying "sustainable" in time, in line with the climate target of the Paris Climate Agreement.

Flying must be reduced immediately to meet that climate target. It was therefore incorrectly misleading that we spoke of "sustainable flying". More information on the need to reduce flying is available here.

However, KLM's policy is to grow and emit more CO2.

KLM plans to keep growing. As long as we grow, our total CO2 emissions will increase. Our suggestion that our emissions will decrease and that flying can be done "sustainably" or "responsibly", and by flying KLM a "more sustainable future" is closer to being achieved, was false and misleading.

Climate damage is not mitigated by making a financial contribution to KLM's CO2ZERO programme.

We ran a marketing campaign called "CO2ZERO". In it, we asked consumers to make small financial contributions to reforestation projects or the cost of using small amounts of alternative fuels. We said this would "offset", "reduce" or serve as "offsetting" the negative climate impact of flying. This is just not true. The payments do not contribute to achieving the climate goal of the Paris Climate Agreement. The name "CO2ZERO" of our marketing campaign, was incorrect and misleading.

The only way to meaningfully reduce the impact of flying on the climate and contribute to achieving the climate goals is to not fly.

Sincerely,

[name and signature CEO]

ANNEX C

Text proposal for the correction/banner KLM should publish/show on social media

Correction to KLM ads: There is no such thing as "sustainable" flying - flying must be reduced immediately to be in line with the goal of the Paris Climate Agreement.

1 Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market, OJEU L 149

2 Guidelines on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market, OJ C 526/1